

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
NOV 13 2007
SCH
Clerk

UNITED STATES OF AMERICA,

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CIV 07-4122

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Plaintiff,

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-vs-

MEMORANDUM OPINION
AND ORDER

STEVE A. NELSON,

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Defendant.

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Defendant filed a Motion For Reconsideration of the Motion to Strike the Declaration Accompanying Memorandum Pursuant to Rule 60b, Doc. 12. This motion is denied because the Court finds the Declarations of Griff G. Anderson dated July 2, 2007 and October 30, 2007 filed by the United States in this matter satisfy the requirements of 28 U.S.C. § 1746. Section 1746 provides in relevant part that:

Whenever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same ..., such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated *in substantially the following form*:

- (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".
- (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

28 U.S.C. § 1746 (emphasis added).

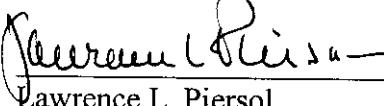
The Declaration signed by Mr. Anderson on July 2, 2007, states the following: "I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of July, 2007. (Signature of Griff G. Anderson)". Other than a different date, the October 30, 2007, Declaration recites the same language. Mr. Anderson's Declarations are exactly in the form set forth in 28 U.S.C. § 1746(2), for subscribing and dating declarations within the United States. The Court notes the Declarations cite to "28 U.S.C. § 1746(1)," as the basis for declaring the included facts, which subsection refers to executing the document outside of the United States. There is no evidence that Mr. Anderson was outside the United States when he executed either of the Declarations, however, and his citation to the correct subsection is not a necessary requirement for lawfully executing such declarations. Thus, the Court finds Mr. Anderson's Declarations meet the requirements for unsworn declarations under penalty of perjury under 28 U.S.C. § 1746 and this Court is not deprived of jurisdiction as alleged by Defendant in his motion. Accordingly,

IT IS ORDERED:

1. That Defendant's Motion for Reconsideration, Doc. 12, is denied.
2. That Defendant shall comply with the Court's Order, Doc. 10, entered on November 2, 2007.

Dated this 13¹ day of November, 2007.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Shelly Margulies
DEPUTY